IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1638 of 2004
with
SPECIAL CIVIL APPLICATION No 10948 of 2000
with
CIVIL APPLICATION No 455 of 2004
in
SPECIAL CIVIL APPLICATION No 10948 of 2000
with
SPECIAL CIVIL APPLICATION No 4505 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARDAR VALLABHBHAI NATIONAL INSTITUTE OF TECHNOLOGY
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 1638 of 2004
MR NV ANJARIA for Petitioner No. 1
MR NAGESH SOOD, AGP for Respondent No. 1-2
NOTICE SERVED for Respondent No. 1-5
MR PRASHANT G DESAI for Respondent No. 3
MR KK TRIVEDI for Respondent No. 4-5
MR SP MAJMUDAR for Respondent No. 6-7

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 18/07/2004

CAV COMMON ORAL JUDGEMENT

As all the aforesaid Special Civil Applications and Civil Applications are interconnected and with regard to the same land in question, the present Special Civil Applications and Civil Applications are heard together and disposed of together by this common judgment and order.

SCA No.4505 of 1995 was filed by SVR College of Engineering and Technology, Surat for an appropriate writ, direction and order quashing and setting aside the notice dated 28.4.1995 and also the Town Planning Scheme Surat No.6 (Piplod) dated 19.10.1995 in so far as it deprives the petitioner of Original Plot No.32-C situated at Surat.

SCA No.10948 of 2000 is filed by the petitioner Mohammed Safi Abbasbhai Memon who is the allottee of F.P.No.97 under the TPS No.6 (Piplod) for an appropriate writ, direction and order quashing and setting aside the resolution passed by the Town Planning Committee of the respondent no.1 - Surat Municipal Corporation dated 24.4.2000 vide Resolution No.40 of 2000 and also for an appropriate writ, direction and order directing the Surat Municipal Corporation to take over the possession of F.P.No.97 of TPS No.6 (Piplod) from the respondent no.3 (who was the petitioner of SCA No.4505 of 1995) as per the final TPS No.6 (Piplod).

SCA No.1638 of 2004 is filed by Sardar Vallabhbhai National Institute of Technology (petitioner of SCA No.4505 of 1995) for an appropriate writ, direction and order quashing and setting aside the order passed by the State Government dated 22.12.2003 i.e. order passed by the Urban Development & Urban Housing Department in refusing to vary the scheme in so far as the land bearing F.P.No.97 of Surat of TPS No.6 (Piplod) is concerned.

2. Few facts are necessary for the purpose of determining the present Special Civil Applications and civil applications.

2.1. That there is a campus of SV Regional College in

250 acres of land i.e. about 10 lakh sq.mtrs. situated in Surat which were in various Survey Numbers inclusive of S.No.78/A. TPS No.6 (Piplod), Surat was framed and against the land bearing S.No.78/A Paiki O.P.No.1/A/1 admeasuring 2023 sq.mtrs. of land is given F.P.No.97 admeasuring 1575 sq.mtrs. of land which is now allotted to the petitioner of SCA No.10948 of 2000 under the Town Planning Scheme which has become final. The said Final Plot No.97 alongwith 3 other small parcels of land are abutting 60 mtrs. road. Considering the total holding of the petitioner of SCA No.1638 of 2004, there was only 1 to 2% deduction and F.P.No.97 and 98, 95 and 96 which were forming part of the campus of the petitioner college is on one side of 60 mtrs. road and rest of the campus is on other side of the 60 mtr. road. Thus, only 3 to 4% of total campus is on one side of the road and 96% of the campus is on the other side of 60 mtrs. road. Out of the aforesaid plots which is on one side of the 60 mtrs. road, F.P.No.97 is allotted to the petitioner of SCA No.10948 of 2000. F.P.No.96 is reserved and allotted to the Collector for construction of the Collector's Office. It is also pertinent to note that just adjacent and on the 60 mtr. road, there are big shopping centres and they are used for commercial purpose.

2.2. SCA No.4505 of 1995 came to be filed by the original land owner i.e. SVR College of Engineering & Technology, Surat for the prayers which are stated hereinabove. It is pertinent to note that in the said Special Civil Application, the petitioner of SCA No.10948 of 2000 though was a necessary and proper party as he was allotted F.P.No.97 under the Town Planning Scheme was not joined as a party-respondent in the aforesaid Special Civil Application. The aforesaid Special Civil Application No.4505 of 1991 came up for hearing before this Court (Coram: J.N.Bhatt, J) who by its order dated 2.2.1996 disposed of the aforesaid Special Civil Application No.4505 of 1995 allowing the petitioner institution to make a fresh representation to the Surat Municipal Corporation for variation in the Town Planning Scheme and on such representation, the Surat Municipal Corporation was directed to consider and propose a variation in the disputed Town Planning Scheme to the State Government and the State Government was directed to consider the proposal and recommendation of the petitioner as well as the Municipal Corporation sympathetically while exercising powers under Section 71 of the Gujarat Town Planning & Urban Development Act, 1976 (hereinafter referred to as "the Act"). It seems that the said order was challenged by the petitioner of SCA No.10948 of 2000 by way of Letters Patent Appeal

before the Division Bench of this Court. It came to be heard and disposed of by the Division Bench of this Court (Coram: G.D.Kamat, CJ & C.K.Thakker, J) vide its order dated 30.9.1996 in LPA No.383 of 1996 in which order order of SCA No.4505 of 1995 came to be disposed of by observing as under:-

"In our view, if the final scheme is modified by the State Government based on the order made by the Learned Single Judge indeed, the appellant will be affected. In any case, if the appellant is to be dislodged from the final plot no.97, the appellant will have to be accommodated in some other plot as he has already lost his plot no.78 paiki for implementing the final scheme. It is common ground that the appellant was not before the learned Single Judge in the special civil application. In fitness of the things and regard being had to para 5 of the impugned order dated 2nd February, 1997 in our opinion it is just and proper that the appellant approach the learned Single Judge by an application upon giving notice to the parties concerned and the learned Single Judge may consider the same and pass an appropriate order."

2.3. It seems that pursuant to the order passed by this Court in LPA No.383 of 1996, CA NO.518 of 1998 was filed by the petitioner of SCA No.10948 of 2000 and the said Civil Application came up for hearing before the Learned Single Judge of this Court (Coram: D.C.Srivastava, J (as he then was)) and CA No.518 of 1998 which was filed for joining the applicants as respondent nos.4 to 7 in SCA No.4505 of 1995 came to be allowed by an order dated 6.10.1999. However, it is pertinent to note that as such SCA No.4505 of 1995 was in fact disposed of and it was not revived/restored to file and therefore, without restoring and/or reviving SCA No.4505 of 1995, the petitioners of SCA NO.10948 of 2000 i.e. applicants of CA NO.518 of 1998 are permitted to be joined as respondent nos.4 to 7 and thereafter, the said Special Civil Application is being adjourned time and again as Special Civil Application No.10948 of 2000 and Special Civil Application No.1638 of 2004 are ordered to be placed with SCA No.4505 of 1995. . However, the fact remains that technically SCA No.4505 of 1995 is disposed of and no order with regard to revival and/or restoration has been passed.

That thereafter, the petitioners-original allottees of F.P.No.97 i.e. Mohd. Safi Abbasbhai Memon

& Others had preferred SCA No.10948 of 2000 for the prayer and the reliefs which are stated hereinabove. It was the contention on behalf of the petitioners of SCA NO.10948 of 2000 that in fact, they are allotted F.P.No.97 under the final TPS NO.6 (Piplod) and in lieu of their original S.No.78 Part of Village Piplod admeasuring 2023 sq.mtrs. of land and in fact, without actually allotting the land in question i.e. F.P.No.97 to them, the Surat Municipal Corporation has already taken over the possession of the land bearing S.No.78 Part from the petitioners which is allotted to some other persons under the T.P.Scheme. In the meantime, as pursuant to the order passed by this Court in SCA No.4505 of 1995, the Surat Municipal Corporation on the representation being made by the Institution passed their resolution being Resolution No.40 of 2000 dated 24.4.2000 by which a decision was taken to vary the Town Planning Scheme qua F.P.No.97 and it was resolved to allot F.P.No.51 to the petitioners of SCA NO.10948 of 2000 instead of F.P.No.97 and not to take the possession of F.P.No.97 from the petitioner of SCA No.10948 of 2000. Thus, SCA No.10948 of 2000 came to be filed by the allottees of F.P.No.97 challenging the resolution passed by the Town Planning Committee of respondent no.1 - Surat Municipal Corporation dated 24.4.2000 being Resolution No.40 of 2000 and also for an appropriate writ, direction or order directing the Surat Municipal Corporation to take over the possession of F.P.No.97 of TPS No.6 (Piplod) from the respondent no.3 i.e. institution petitioner of SCA NO.10948 of 2000 and to implement the Town Planning Scheme which has become final.

2.4. This Court issued notice in SCA NO.10948 of 2000 and an order came to be passed to place SCA No.10948 of 2000 alongwith SCA No.4505 of 1995. Ultimately, both the Special Civil Applications i.e. SCA No.10948 of 2000 and papers of SCA No.4505 of 1995 were placed before the Learned Single Judge for admission hearing and came up for hearing before the Learned Single Judge of this Court (Coram: Jayant Patel, J) and by order dated 20.3.2002 passed by the following order:-

"Rule by way of interim relief.

It is directed that it will be open to the State Government to consider the question of variation of the scheme. However, when the State Government is considering the question for variation of the scheme, the State Government shall give an opportunity of hearing to the petitioner as well as to the respondent No.3. It

is also clarified that when the State Government considers the question of variation of the scheme, the petitioner will be at liberty to make submission to the State Government that the variation should not be sanctioned or in case, if it is sanctioned, he may be allotted a plot at a different place, then the place, which is proposed under the reservation due to variation.

The State Government shall take final decision and such decision shall be placed on recorda nd the decision of the State Government shall not be implemented without leave of the Court. The physical position of the final plot No.97 shall be preserved in the same condition by the Corporation. D.S. permitted."

2.5. Pursuant to the order passed by this Court dated 28.3.2002 in SCA No. 10948 of 2000, the State Government initiated the proceedings to consider the question of variation of the scheme and opportunity was given to all the concerned parties i.e. petitioners of SCA No.1638 of 2004, petitioner of SCA No.10948 of 2000 i.e. the persons who were likely to be affected and who were interested in the variation of the scheme. The Member Secretary, Urban Development & Urban Housing Department, State of Gujarat heard the parties and after hearing the parties and even visiting the site at Surat, in presence of both the parties, the State Government by its order dated 22.12.2003 has taken a decision not to vary the scheme as suggested/proposed by the appropriate authority i.e. Surat Municipal Corporation and passed the following order:-

"F.P.No.97 (admeasuring 1577 sq.mtrs.) was allotted to the petitioner in the preliminary TPS No.6 (Piplod), Surat shall remain as it is and the appropriate authorities shall give the possession of F.P.No.97 to the petitioners."

After approval of the State Government, a copy of the decision was given to all the parties and to the District Collector and an order came to be passed to produce the aforesaid order before this Court for necessary decision/orders (before implementation).

2.6. Being aggrieved and dissatisfied with the order passed by the State Government, Urban Development & Urban Housing Department dated 22.12.2003, the petitioner Sardar Vallabh National Institute of Technology has preferred the present Special Civil Application No.1638

of 2004 for an appropriate writ, direction and order quashing and setting aside the order dated 22.12.2003.

3. On passing of the order by the State Government dated 22.12.2003, a Civil Application is filed by the petitioner of SCA No.10948 of 2000 being CA No. 455 of 2004 in SCA No.10948 of 2000 to grant leave to the respondents - State Authorities to implement the order dated 22.12.2003 and to direct the original owner i.e. petitioner of SCA No.1638 of 2004 to hand over the actual and peaceful possession of Final Plot No.97 under TPS No.6 (Piplod), Surat admeasuring about 1577 sq.mtrs. of land to the applicant. It seems that the said application is filed as by order dated 20.3.2002, this Court passed an order in SCA NO. 10948 of 2000 to the effect that the State Government shall take final decision and such decision shall be placed on record and the decision of the State Government shall not be implemented without leave of the Court. As the facts of SCA No. 10948 of 2000 and SCA NO. 1638 of 2004 are interconnected and both the aforesaid Special Civil Applications are with regard to the same land in question, therefore, all the aforesaid Special Civil Applications and Civil Applications are heard together and letter disposed of by this common order.

4. Shri N.V.Anjaria, Learned Advocate appeared on behalf of the petitioner in SCA No.1638 of 2004 i.e. Sardar Vallabh National Institute of Technology original land owner. Shri Anjaria has assailed the order passed by the State Government dated 22.12.2003 on the following grounds:-

i. In view of the order passed by this Court dated 2.2.1996 passed in SCA NO. 4504 of 1995, the State Government could not have rejected the proposal made by Surat Municipal Corporation for variation of the scheme with regard to the land in question.

ii. The private respondents i.e. allottees of land bearing F.P.No.97 had no right to insist that he should be allotted F.P.No.97 itself.

iii. That the land bearing F.P.No.97 which is allotted to the private respondents is required by the Institution for public purpose as it is in the campus and striking the balance between the public and private requirement, the State Government ought to have accepted the proposal of the Corporation for variation of the scheme with

regard to the land in question and ought to have allotted another land to the private respondents.

iv. The judgement and order passed by this Court dated 2.2.1996 passed in SCA No. 4505 of 1995 is having a binding effect.

v. When the Municipal Corporation proposed the variation, the State Government ought to have exercised powers under Section 71 and ought to have varied the scheme with regard to the land in question.

vi. In view of the disposal of Letters Patent Appeal No. 383 of 1996, the judgement and order passed by this Court in SCA No.4505 of 1995, the State Government ought to have varied the scheme by allotting another land to the private respondents.

5. On the other hand, Shri K.K.Trivedi, Learned Advocate appearing for the private respondents who are allotted the land bearing F.P.No.97 under the TPS No.6 (Piplod), Surat has supported the order passed by the State Government on the following grounds:-

i. It is not a question of insistence on the part of the private respondents to insist for a particular land.

ii. The land bearing F.P.No.97 is allotted to his clients, the Town Planning Scheme has become final and therefore, it is the duty of the authorities to implement the Town Planning Scheme and hand over the peaceful and vacant possession of the land in question as per the Town Planning Scheme.

iii. Once the Town Planning Scheme has become final and the State Government has refused to vary the scheme, the petitioner cannot insist for variation of the scheme and once the Town Planning Scheme has become final, it has become pat of the Act and there is a very little scope of interference by this court.

iv. The State Government has passed an order considering all the aspects and considering the situation of the land in question and considering the fact tha only some portion of the land is on side of the road which cannot be said to be in

the major portion of the campus and therefore, insistence on the part of the petitioner not to hand over the possession of Final Plot No.97 on the ground that it is a part of the campus is absolutely unjustified and most arbitrary.

6. Shri Sud, Ld. AGP has submitted that after considering the various aspects, the State Government has taken a conscious decision in refusing to vary the scheme and to continue the scheme as it is and that said decision was taken even after the visit by the Principal Secretary at the land in question. He has further submitted that detailed reason and speaking order has been passed by the State Government and he relies upon the reasons assigned in the impugned order. He has further submitted that once a conscious decision is taken by the State Government not to vary the scheme and once the Town Planning Scheme has become final, it has become part of the Act and there is a very little scope of interference by this Court and it is the bounden duty of the appropriate Authority now to implement the Town Planning Scheme which has become final.

7. Shri P.G.Desai, Learned Advocate appears on behalf of the Surat Municipal Corporation - appropriate authority. He has submitted that pursuant to the order passed by this Court in SCA No. 4505 of 1995, a resolution came to be passed by the Surat Municipal Corporation at the request of the petitioner institution to vary the scheme and the said proposal was sent to the State Government and now when the State Government has taken a conscious decision by passing a speaking order not to vary the scheme and to hand over the peaceful and vacant possession of F.P.No.97 to the private respondents, now the Municipality-appropriate Authority is required to hand over F.P.No.97 to the petitioners of SCA No.10948 of 2000 who are the allottees of the land under the Town Planning Scheme which has become final. He has further submitted that once a conscious decision is taken by the State Government now to vary the scheme, it has become part of the Act and as held by this Court in catena of judgment, the same cannot be challenged by the petitioner. Under the circumstances, he requested to dismiss the aforesaid Special Civil Application.

8. Heard the Learned Advocates appearing on behalf of the parties.

9. So far as the contention on behalf of the petitioner institution to the effect that in view of the order passed by this Court passed in SCA No.4505 of 1995,

it is not open for the State Government to vary the scheme has no substance whatsoever. In SCA No.4505 of 1995, this Court, while disposing of the aforesaid Special Civil Application, has issued the following directions:-

1. The petitioner society will make a fresh representation to respondent No.3 - Surat Municipal Corporation for variation in the town planning scheme under consideration. The representation will be made on or before 29.2.1996.

2. Upon receipt of such representation from the petitioner, respondent No.3 shall consider and proposed variation in the disputed town planning scheme to respondent No.2 - State of Gujarat latest within a period of six weeks.

3. The State of Gujarat shall consider the proposal and recommendations of the petitioner and the Municipal Corporation sympathetically while exercising the powers under Section 71 of the Gujarat Town Planning & Urban Development Act, 1976. Respondent No.1 shall accord priority to this matter and will decide as early as possible.

4. Respondents are directed not to disturb possession of the petitioner until final decision is taken in this behalf.

5. In case of any difficulty, it would be open for the parties to approach this Court for clarification or further direction.

Therefore, this Court allowed the petitioner society to make a fresh representation to the Corporation for variation of the scheme and on receipt of such representation from the petitioner, the Corporation was directed to consider and propose variation in the disputed Town Planning Scheme to the Sate Government and in turn, the State Government was directed to consider the proposal and the representation/recommendation and the Municipal Corporation sympathetically while exercising powers under Section 71 of the Gujarat Town Planning & Urban Development Act, 1976 (hereinafter referred to as "the Act") and till then the respondents were directed not to disturb the possession of the petitioner institution until the final decision is taken in this behalf. Therefore, the say that this Court in its order dated 2.2.1996 passed in SCA No.4505 of 1995

directed the State Government to accord the approval is not correct. The State Government was directed to consider the proposal and the representation of the petitioner and recommendation of the Corporation while exercising powers under Section 71 of the Act. Therefore, the contention of the petitioner that considering the order passed by this Court in SCA No.4505 of 1995, the State Government was bound to vary the scheme is not correct and has no substance whatsoever and the same is required to be rejected outright.

10. The second contention on behalf of the petitioner that in view of the dismissal of Letters Patent Appeal No.383 of 1996 in SCA No.4505 of 1995 filed by the petitioner of SCA No.10948 of 2000, it has a binding effect and the State Government is bound to accord the approval, has also no substance. In fact, from the bare reading of the order passed by this Court in Letters Patent Appeal No.383 of 1996 in its order dated 30.9.1996, the Court has not gone into the validity of the order passed in SCA No.4505 of 1995. On the contrary, this Court directed the petitioner of SCA No.10948 of 2000 to move an appropriate application before the Learned Single Judge for being joined as party in SCA No.4505 of 1995 and in fact, subsequently, an application was submitted in SCA No.4505 of 1995 by the petitioner of SCA No.10948 of 2000 to allow them to be joined as parties in SCA No.4505 of 1995 and the said application also came to be allowed (Coram: D.C.Srivastava, J) (as he then was). However, it seems that through oversight, order with regard to revival of SCA No.4505 of 1995 is not passed till date. and the said application for joining party in SCA No.4505 of 1994 was in a disposed of matter which is still not revived. Be that as it may, the fact remains that this Court in LPA NO.383 of 1996 has not decided the validity of the order passed in SCA NO.4505 of 1995 on merits and even considering that the order passed by the SCA No.4505 of 1995 is confirmed and is binding upon the respondents State Government then also, in view of the discussions hereinabove to the effect that the State Government was directed to consider the variation in accordance with law sympathetically and under Section 71 of the Act and when the State Government has decided not to vary the scheme after exercising powers under Section 71 of the Act, it cannot be said that there is any illegality committed by the State Government.

11. So far as the argument and submission on behalf of the petitioner society to the effect that the petitioner of SCA No.10948 of 2000 cannot insist for

handing over of the possession of a particular land is concerned, under the Town Planning Scheme which has become final, the petitioner of SCA No.10948 of 2000 is allotted Final Plot No.97. The said scheme has become final after following due procedure as required under the Act. Not only that, but now the State Government has also rejected the proposal for variation of the scheme and has directed to hand over the peaceful and vacant possession of Final Plot No.97 to the allottee. Therefore, there is no question of now insisting by the petitioner of SCA NO.1638 of 2004 to allot Final Plot No.97. In fact, under the Town Planning Scheme when he is allotted Final Plot No.97, there is a right created in his favor and therefore, he is justified in insisting for allotment of Final Plot No.97. On the contrary, considering the reasons mentioned by the State Government in its order dated 22.12.2003, the insistence on the part of the petitioner institution not to give possession of Final Plot No.97 is unjustified and arbitrary which will be dealt with hereinabove. Under the circumstances, the argument on behalf of the petitioner society that why the petitioner of SCA No.10948 of 2000 is insisting for allotment of Final Plot No.97 has no substance. The petitioner of SCA No. 10948 of 2000 is justified in insisting for handing over possession of Final Plot No.97 which has become final under the Town Planning Scheme.

12. So far as the argument and submission on behalf of the petitioner with regard to the public need and balance to be struck between the public need and private need is concerned, the State Government in its order dated 22.12.2003 has elaborately dealt with it. In fact, the Principal Secretary, Urban Development & Urban Housing Department, State of Gujarat has visited the site at Surat. The said visit was made in presence of both the parties and the Principal Secretary has considered the situation of the land in question. He has also considered the following fact:-

"Final Plot allotted to the petitioner of SCA No.10948 of 2000 is located at the campus of S.V.Regional College of Technology and the land is located on 6 mtr. Surat Dumas Road. The main campus of SVR College is located on the other side of Surat-Dumas Road adjacent to the recreation ground and garden of Surat Municipal Corporation. The Final Plot allotted to the petitioner - private respondent is therefore not in the main campus but smaller part of the campus located on the other side of the road. The Final Plot is not close to any of the SVR College

buildings. The nearest building is that of the SVR College Guest House. That campus is of 250 acres or about 100 hectares (about 10 lakh sq.mtrs.). A substantial part of the SVR College has been kept out of the various Town Planning Schemes of Surat Municipal Corporation, obviously to support the activities of SVR College. Some land outside TPS No.6 (Piplod), Surat was taken for widening of the Surat Dumas Road for which they have been paid compensation. The land admeasuring 45431 sq.mtrs. was acquired by Surat Municipal Corporation and the institute was paid Rs.30 lakhs by way of compensation. In Town Planning Scheme No.6, out of 15986 sq.mtrs. with SVR College, Surat, in that scheme, they have been given Final Plot No.98 admeasuring about 4171 sq.mtrs. Thus, there is a reduction of 15986.4171 = 11081 sq.mtrs. and considering the whole campus, the deduction is only about 1.18%.

Thus, considering the situation of the land in question and considering the fact that only 1 to 2% deduction is made from the total campus of SVR College and considering the fact that only part of the land is on one side of the road which is a smaller one and the main campus is located on the other side of the road. Considering the aforesaid aspect, the State Government has taken a conscious decision not to vary the Town Planning Scheme with regard to land in question and to hand over the peaceful and vacant possession of Final Plot No.97 to the private respondents. It is not that the State Government has not considered at all the aforesaid aspect. Under the circumstances, this argument of the petitioners is also required to be rejected outright.

13. This Court passed an interim order on 20.3.2004 in SCA No.10948 of 2000 and directed that it will be open to the State Government to consider the question of variation of the scheme and at the time of considering the question of variation of the scheme, the State Government was directed to give an opportunity of hearing to the private respondents as well as the petitioner institution. Accordingly, the proceedings were initiated and conducted by the Principal Secretary, Urban Development & Urban Housing Department, State of Gujarat. All the concerned parties were heard. After hearing the concerned parties, it was decided by the Principal Secretary to visit the site on 19.7.2003. The visit was made in presence of both the parties. The campus of SVR College was also visited. The Principal Secretary has

considered the following aspects while rejecting the proposal for variation and directing to hand over the possession of Final Plot No.97 to the private respondents.

"The Town Planning Scheme No.6 (Piplod), Surat was prepared and the petitioner was allotted Final Plot No.97 admeasuring 1577 sq.mtrs. The original plot was abutting the 6 mtr. road and was handed over to the Surat Municipal Corporation by the private respondents i.e. petitioner of SCA No.10948 of 2000 in 1995. The original plot of private respondent is already used for a new road i.e. possession of the original plot is already taken over from the petitioner of SCA No.10948 of 2000 and they are not handed over the possession of Final Plot No.97 which they are entitled to under the Town Planning Scheme which has become final even after 8 years. The Final Plot No.97 is allotted to private respondents is located in the campus of SVR College. The said Final Plot No.97 is also located on the 6 mtr. Surat-Dumas Road (like the original plot). The main campus of SVR College, Surat is located on the other side of Surat-Dumas Road adjacent to recreation pond and garden of Surat Municipal Corporation. Final Plot No.97 is therefore not in the main campus but the smaller part of the campus is located on the other side of the road. The Final Plot is not close to any of the SVR College building and the nearest building is that of SVR College Guest House. The campus area is 250 acres (about 10 lakh sq.mtrs.). Substantial part of SVR College, Surat has been kept out of various Town Planning Schemes of Surat Municipal Corporation. Out of the aforesaid land 45431 sq.mtrs. was acquired by Surat Municipal Corporation and the institution was paid Rs.30 lakhs towards compensation. In the Town Planning Scheme No.6, out of 15986 sq.mtrs. with SVR College, they have been given F.P.No.98 admeasuring 4171 sq.mtrs. Thus, only 11,015 sq.mtrs. is taken under deduction and considering the whole campus, the deduction is only 1.11% and this is calculated ignoring the land acquired from SVR College for road widening as they would be entitled to compensation for the land deduction. In fact, the land admeasuring 5792 sq.mtrs. out of 11081 sq.mtrs. which has gone into deduction is allotted to the District Collector, Surat by

way of Final Plot No.96."

Under the circumstances, it cannot be said that the decision of the State Government is in any way illegal, arbitrary and/or erroneous which calls for the interference of this Court.

14. The State Government has also considered another alternative with regard to allotting some other land to the private respondents instead of Final Plot No.97. The State Government has also considered to assign a Final Plot to the private respondents in the nearby recreation pond and garden of the Surat Municipal Corporation and after visiting the site, it was found that it is completely developed and there was no possibility to accommodating the petitioner in this land.

15. Considering the aforesaid facts and circumstances of the case, when a decision is taken by the State Government not to vary the scheme which has become final and when a conscious decision is taken after giving an opportunity to all the concerned parties and a reasoned and speaking order is passed and it is directed to hand over F.P.No.97 to the private respondents, it cannot be said that the order passed by the State Government is in any way illegal and/or arbitrary and/or contrary to any of the provisions of the Town Planning Act. The State Government considered the proposal for variation. The Sate Government is having statutory powers under Section 71 of the Act and after exercising the said powers, when the State Government has taken a decision not to vary the scheme, the petitioner institution cannot insist for variation of the scheme even thereafter. In fact, once the Town Planning Scheme has become final, it has become part of the Act and in view of the judgement passed by this Court in SCA No.12354 of 2002, individual person cannot insist for variation of the scheme. In the present case, in fact, the State Government considered all the aspects while considering the proposal for variation of the scheme. The State Government has also considered the alternative of allotment of another land in lieu of F.No.97 who after considering all the broad aspects and even after having visiting the place has come to the conclusion that the scheme is not to be varied. Under the circumstances, it cannot be said that the order passed by the State Government is in any way erroneous, illegal or arbitrary which calls for interference of this Court in exercise of powers under Article 226 of the Constitution of India. In fact, it seems that insistence on the part of the institution not to hand over the possession of F.P.No.97 considering the situation of the

land in question is not justifiable at all. Under the circumstances, SCA No. 1638 of 2004 is required to be dismissed.

16. So far as SCA No. 10948 of 2000 and CA No. 455 of 2004 is concerned, in view of the fact that now the State Government has taken a decision not to vary the Town Planning Scheme with regard to the land in question and has directed to hand over the possession of F.P.No.97 (admeasuring 1571 sq.mtrs) allotted to the petitioner of SCA No. 10948 of 2000 as per the Town Planning Scheme which has become final and also in view of the dismissal of SCA No. 1638 of 2004, the petition succeeds and the appropriate authority is directed to implement the Town Planning Scheme by handing over peaceful and vacant possession of F.P.No.97 of TPS No.6 (Piplod) to the petitioner of SCA No. 10948 of 2000 forthwith after taking possession of the same from the petitioner of SCA No.1638 of 2004 i.e. original land owner. This direction is issued also considering the fact that so far as the petitioner of SCA No.10948 of 2000 is concerned, the possession of his original plot is already taken over from him for the purpose of construction of road and he is not handed over the possession of F.P.No.97 allotted to him under the Final Town Planning Scheme which is allotted to him in lieu of his original plot which has gone into widening of the road even after a period of 8 years. Rule is made absolute to the aforesaid extent so far as SCA No.10948 of 2000 and CA No.455 of 2004 are concerned.

The net result of the aforesaid discussion is that SCA No.1638 of 2004 is hereby dismissed. Notice is discharged in SCA NO.1638 of 2004. SCA No.10948 of 2000 is allowed. The appropriate Authority is directed to hand over the peaceful and vacant possession of F.P.No.97 of TPS No.6 (Piplod), Surat to the petitioner by taking over possession from the original land owner - petitioner of SCA No.1638 of 2004 forthwith and to implement TPS No.6 (Piplod), Surat which has become final. There shall be no orders in CA NO.455 of 2004 in view o the direction issued in SCA No.10948 of 2000. So far as SCA No.4505 of 1995 is concerned, though it is tagged alongwith the present Special Civil Application, but in fact, the said Special Civil Application is already disposed of and it is not revived and/or restored though in CA No. 518 of 1998, the petitioner of SCA No. 10948 of 2000 are allowed to be joined as party respondents but the same is a disposed of matter and in view of the aforesaid aspect, no further orders are required to be passed in SCA No.4505 of 1995.

(M.R.Shah, J)
jitu

At this stage, Mr.Anjaria, Learned Advocate for the petitioner, presses for continuation of the interim relief granted earlier. In view of the fact that the Town Planning Scheme has already been finalized long back and the petitioner of Special Civil Application No.10948 of 2000 is deprived of his land which is allotted to him under the Town Planning Scheme and the possession of his survey number has already been taken before 08 (eight) years and the Town Planning Scheme has become final 08 (eight) years back, the prayer for continuation of interim relief is rejected. Direct service permitted.

(M.R.Shah, J)
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